

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
COMMODITY FUTURES TRADING : 18-cv-00361-JBW-RLM
COMMISSION, :
Plaintiff, :
- versus - : U.S. Courthouse
: Brooklyn, New York
: May 31, 2018
MCDONNELL, et al., :
Defendants :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
BEFORE THE HONORABLE ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiff:

David William Oakland, Esq.
Alejandra de Urioste, Esq.
Gates Hurand, Esq.
Commodity Futures
Trading Commission
140 Broadway, 19th Floor
New York, NY 10005

For the Defendant:

Patrick K. McDonnell, pro se
20 Rawson Place
Staten Island, NY 10314

Transcription Service:

Transcriptions Plus II, Inc.
61 Beatrice Avenue
West Islip, New York 11795
laferrara44@gmail.com

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1 THE COURT: This is Judge Mann on the line.
2 I'm conducting a telephonic hearing in CFTC v. McDonnell,
3 et al., 18-cv-361.

4 Do I have plaintiff's counsel on the line?

5 MR. HURAND: Yes, your Honor. Good afternoon.

6 This is Gates Hurand for the CFTC.

7 MR. OAKLAND: David Oakland for the CFTC.

8 MS. DE URIOSTE: And Alexjandra de Urioste for
9 the CFTC.

10 THE COURT: And do I have Mr. McDonnell on the
11 line?

12 MR. MCDONNELL: Yes, your Honor, I am here.

13 THE COURT: Have counsel for the CFTC seen Mr.
14 McDonnell's response to the application that was filed by
15 the CFTC last night?

16 MR. HURAND: Yes, your Honor. That's docket
17 number 111. We filed that on his behalf today.

18 THE COURT: Yes, thank you for reminding me of
19 that.

20 All right. So now we have a pileup of issues
21 before this Court. Let me just make some preliminary
22 observations. You know, both sides have been repeating
23 the same arguments and it's getting a bit tiresome. Mr.
24 McDonnell keeps talking about how the CFTC has exceeded
25 the discovery limits. He's relying on a ruling that I

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1 made early in this case which specifically was very
2 limited in scope. The Court, at that time was referring
3 to the fact that it had specifically ordered Mr.
4 McDonnell to provide certain authorizations and the CFTC
5 included an authorization or two that was not
6 specifically within the scope of the Court's order. That
7 did not mean that they weren't entitled to further
8 discovery and yet Mr. McDonnell keeps repeating that the
9 CFTC has exceeded the scope of discovery in this case.

10 I know what my prior rulings are. I don't need
11 to be reminded all the time of what they were, nor do I
12 need any characterization of what they meant. I know
13 what they meant and they're being cited unfairly.

14 By the same token, within the last several
15 days, the CFTC has on several occasions, repeated the
16 history of Mr. McDonnell's -- the obstacles that he has
17 thrown in the way of completing discovery in this case.
18 I'm well aware of it and I don't need to have every
19 submission to the Court recount that history. This file
20 is long enough without cluttering it with a lot of
21 repetitious arguments.

22 All right. Now let's address the issues before
23 the Court. Mr. McDonnell in docket entries 84 and 85
24 which seem to seek the same relief, so I don't know why
25 he felt it necessary to file two communications with the

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1 Court, but he's objecting to the Charter subpoena which
2 he says is illegal because it invades the privacy of his
3 family. His family has nothing to do with this and he
4 asked for relief in stopping the alleged harassment by
5 the plaintiff. He also objects to the temporal scope of
6 the subpoena which seeks information going back to early
7 2016.

8 Let me start with that question, as to why it's
9 necessary to go back to 2016 rather than start with 2017?

10 MR. HURAND: Yes, your Honor. This is Gates
11 Hurand for the CFTC. Part of the subpoena to Charter for
12 subscriber information is looking for IP addresses that
13 may relate to a variety of email and social media
14 accounts, some of which he may have established going
15 back before 2017. And so we're looking to develop
16 evidence about those.

17 THE COURT: And I take it what you're taking in
18 this subpoena is in effect, pedigree-type information.
19 This is noncontent?

20 MR. HURAND: Exactly, your Honor. This is
21 seeking pedigree account information, you know, who holds
22 the account and the IP address that the internet access
23 is occurring from, the telephone number from which a call
24 is coming from.

25 THE COURT: And what is the -- first of all, do

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1 you have any reason to believe the charter is going to
2 comply with the subpoena absent consent from the
3 subscriber?

4 MR. HURAND: Based on my communications with
5 Charter, I believe that they will not produce the
6 information absent the consent.

7 THE COURT: And what is the relevance -- the
8 CoinDropMarkets@gmail.com was the subject of a prior
9 telephonic proceeding before this Court, maybe even more
10 than one. I've lost count. But that is the email
11 address for the business at issue in this case. The
12 plaintiff alleged that he can no longer access that gmail
13 account himself because he lost the phone with the two-
14 factor authentication. What are the other email
15 addresses?

16 MR. HURAND: Other email addresses that we
17 expect Mr. McDonnell may have used in this matter? I am
18 not sure I understand, your Honor.

19 THE COURT: Well, the subpoena for which you
20 haven't even obtained -- you haven't obtained consent for
21 this subpoena, correct -- an authorization?

22 MR. HURAND: Um.

23 THE COURT: You said that Charter is not going
24 to comply absent the consent of the subscriber.

25 MR. HURAND: Yes, your Honor.

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1 THE COURT: Now in our prior proceeding, we
2 were dealing with specific email accounts.

3 MR. HURAND: Uh-hum.

4 THE COURT: And a PayPal account. Now there is
5 a list of email accounts. These were not all the subject
6 of our prior discussions. So you haven't applied to the
7 Court for consent from Mr. McDonnell but from what you've
8 said, you can't get this information without his consent.

9 MR. HURAND: Your Honor, I think that the Court
10 is referring to the list of email addresses that are part
11 of the definition of relevant subscribers for the Charter
12 subpoena, is that right?

13 THE COURT: Yes.

14 MR. HURAND: Those emails were included as ways
15 to identify the subscriber who, you know, we believe to
16 be or maybe Patrick McDonnell. And so those are email
17 addresses that we believe may relate to him and so may be
18 a way that Charter can tie perhaps a different account
19 that it has to his internet use. We're not looking for
20 the contents of those emails from Charter and I don't
21 believe that Charter could, you know, has access to
22 those.

23 THE COURT: Well, as I understand it, you're
24 not asking for content at all. You're asking for the
25 account pedigree information but as I understand it, you

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1 would be seeking account pedigree for these email
2 accounts, correct?

3 MR. HURAND: These email accounts would be
4 Charter to identify the cable or telephone subscriber for
5 which we would obtain pedigree information such as IP
6 addresses that Charter subscriber had logged in from and
7 billing information relating to the Charter account.

8 I don't think that they would have the type of
9 user information that GMX or GMail would have.

10 MR. MCDONNELL: Your Honor, may I address that?

11 THE COURT: No, I am not --

12 MR. MCDONNELL: All right. I apologize.

13 THE COURT: -- yet finished.

14 MR. MCDONNELL: Okay.

15 THE COURT: You re describing all of these
16 emails, telephones, IP addresses, the one name, the
17 street address, as relevant subscribers. You are asking
18 for all subscriber information for the relevant
19 subscribers. So you are asking for account pedigree
20 information for all of those accounts, emails,
21 telephones, et cetera.

22 MR. HURAND: Yes, your Honor. For example, if
23 the subscriber used or associated one of those emails --
24 email addresses with the internet or telephone account,
25 then that would hopefully be picked up by this search.

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1 THE COURT: All right. Mr. McDonnell, you
2 wanted to be heard?

3 MR. MCDONNELL: I'm just -- they're saying that
4 they're looking to access the IP address and things of
5 that nature. I discussed this, I think it was in -- gee,
6 my answer to this actual docket that they -- in Exhibit
7 13 of their evidence booklet that they gave me, they have
8 my IP address. They have all this information that
9 they're claiming that they're looking to extract from
10 son's account. They have it all. So it is redundant in
11 terms of requiring information that they already have
12 that they submitted into evidence.

13 And I don't see -- and my personal belief is
14 since I've really started putting my head down, doing the
15 legal work and all the things like that, that they're in
16 seek of who I could possibly, you know, be talking to in
17 regards to my legal. The only phone calls that I make on
18 this phone are to my mother or to the Court or to the
19 CFTC. Nobody in my family uses this phone no more at all
20 at this point because --

21 THE COURT: Well, you know, you make a lot of
22 representations to the Court but as yet, you have not
23 shown up for your deposition. You have managed to avoid
24 it even though --

25 MR. MCDONNELL: (Indiscernible).

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1 THE COURT: -- even though it was scheduled and
2 now you're throwing information out that is not under
3 oath and we need to --

4 MR. MCDONNELL: (Indiscernible).

5 THE COURT: -- we need to get to the bottom of
6 this.

7 MR. MCDONNELL: No, my thing is, I am just
8 saying that they have the information that they're saying
9 they are seeking already. They've presented it here in
10 an evidence booklet. So what would be the need to have
11 that same information that --

12 THE COURT: Well, I don't have access to the
13 evidence booklet. So I don't know what you're talking
14 about and that's what I am trying to find out, why they
15 need this information.

16 MR. MCDONNELL: Okay. I am sorry.

17 THE COURT: And why it's relevant. And
18 CoinDropMarkets@gmail.com we know is relevant and we know
19 that you haven't produced that although the CFTC has
20 represented to the Court and has submitted documentation
21 from Google, that it is within your custody, possession
22 and control because you have access to it.

23 You claimed that you didn't have access because
24 you lost the phone with the two-factor authentication but
25 you could have access to it and you have just turned a

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1 blind eye to that --

2 MR. MCDONNELL: I did not -- honestly, your
3 Honor, I didn't --

4 THE COURT: -- because --

5 MR. MCDONNELL: -- I never researched it to
6 that level. I just became aware of that when they sent
7 that to me.

8 THE COURT: Well, are you now --

9 MR. MCDONNELL: (Indiscernible).

10 THE COURT: -- prepared to access that
11 information and provide it to them because you were
12 ordered to produce that --

13 MR. MCDONNELL: Yeah. No, I have no problem
14 accessing. I have not denied accessing it. What I am --
15 what I was saying is that in my letters is that I have
16 signed the authorizations and did everything that I was
17 supposed to in regards to that email in terms of the --
18 nowhere did I say do that if I was ordered by the Court.
19 You know, but up until the point I felt that I have done
20 everything that I am supposed to do and the only time
21 that I was aware of that was in regards to the filing of
22 the Court to you.

23 The first time I recognized that I could take
24 that approach that they got from a professional in
25 Washington to recover my account, was the notification

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1 that they gave to the Court.

2 THE COURT: And when you saw that, you didn't
3 offer to produce that information for them, did you?

4 MR. MCDONNELL: I didn't because I felt I had
5 completed all my obligations under the previous court
6 orders.

7 THE COURT: Well, let me just make it clear to
8 you, you have not and we will get to your answers to the
9 interrogatories and document demands which you did not
10 produce as directed by the deadline directed. Your
11 explanation essentially is you forgot which frankly, is
12 not credible. It's not as if this case hasn't been on
13 your mind since you've been causing the CFTC to file
14 multiple papers per day on your behalf.

15 Let me ask --

16 MR. MCDONNELL: (Indiscernible).

17 THE COURT: -- the CFTC --

18 MR. MCDONNELL: (Indiscernible).

19 THE COURT: -- it is not clear to me why you
20 need all of the information set forth in the subpoena
21 which you cannot -- you will not even -- as you've
22 indicated, you are not going to get without a consent
23 from the subscriber and you haven't even established that
24 Mr. McDonnell or the entity was the subscriber to these
25 accounts.

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1 MR. HURAND: So the information that was put
2 into this chart in an attempt to identify the relevant
3 subscriber, came from our documents that we have obtained
4 in this case, you know, information that we believe may
5 be related to Mr. McDonnell that come from either his or
6 Coin Drop Markets' business records that we have been
7 able to obtain and so the thought process was to the
8 extent that this information was linked to a cable
9 internet or telephone account that was used for the
10 business, it would come up on Charter's search.

11 And so that's why it was included. The concern
12 was that, you know, given what we understand to be a
13 large number of email addresses that Mr. McDonnell has
14 used, it may be that CoinDropMarkets@gmail.com was not
15 the email address that he, in fact, may have used for
16 this Charter account or for the internet account.

17 You know, just as an example of this, we
18 understand from Federal Express records that he's used --
19 had multiple accounts with multiple email addresses, all
20 of which appear to relate in some way to either
21 CabbageTech or to Coin Drop Markets or, you know, in some
22 other way to his business.

23 THE COURT: The problem is again, that you're
24 going to -- in order to get these documents by subpoena,
25 you're going to have to get a consent and before the

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1 Court is going to order Mr. McDonnell to consent, I want
2 to be satisfied that he, in fact, arguably, at least, has
3 the authority to consent.

4 And for some of these email addresses, he
5 doesn't -- he hasn't disputed that these were the
6 business accounts that he used.

7 The problem is, some of them may well be family
8 accounts that he may have -- he may on occasion have
9 used, that doesn't mean that he's the subscriber.

10 MR. HURAND: Your Honor, or authorized user may
11 be another term but it -- I take the Court's point that
12 it may be that he was using the account but may not have
13 been the subscriber or authorized user.

14 THE COURT: Well, why don't you ask -- I will
15 allow you now to ask questions of Mr. McDonnell. Let's
16 get to the bottom of this.

17 MR. HURAND: Mr. McDonnell, which -- how did
18 you access the internet from your house?

19 MR. MCDONNELL: Through the IP address that you
20 have in Exhibit 13.

21 MR. HURAND: Which one is that?

22 MR. MCDONNELL: It's in the docket that I
23 answered (indiscernible).

24 MR. HURAND: Is it the first IP address the
25 subpoena, the 24.168.89.122?

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1 MR. MCDONNELL: I wouldn't know it offhand but
2 it's the one that I mentioned in my recent docket about
3 you having it in the exhibit.

4 MR. HURAND: Okay. Because it appears that
5 there's a second one on the same document -- and your
6 Honor, if it's helpful, I believe that --

7 MR. MCDONNELL: It's 24.168.89 and I put that
8 (indiscernible).

9 THE COURT: That's the first --

10 MR. HURAND: Your Honor?

11 THE COURT: -- IP address on the subpoena which
12 is docket entry 84-2, page 8.

13 MR. HURAND: And, your Honor, one -- the second
14 IP address, the 72, I believe when Mr. McDonnell refers
15 to the exhibit book in tab 13, I believe that he's
16 referring to the exhibits that the CFTC put together and
17 served on him in advance of the March 6th hearing. Is
18 that right, Mr. McDonnell?

19 MR. MCDONNELL: It was actually a third party
20 did it (indiscernible) by the name of Maxmine GLIP Data
21 Results (ph.) and they did a -- I guess an analysis that
22 clearly shows my internet protocol IP address starting in
23 24.168.89 and also they show the assigned network
24 address. They showed the defendant's geographical
25 location, as well as the ISP provider, Time Warner, which

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1 you related to in your response saying that they changed
2 their name to the name that we're talking about now.

3 MR. HURAND: And those are yours, Mr.
4 McDonnell?

5 MR. MCDONNELL: What are mine?

6 MR. HURAND: Is that IP address your IP
7 address?

8 MR. MCDONNELL: I'm going to be honest with
9 you, I have never looked at my own IP address. It's not
10 something that people normally do. So, I mean, you guys,
11 you know, did some research -- I don't know. I did -- I
12 could check my IP address, if you show me how to do it
13 and tell you if it is. I don't know my IP address. It's
14 not something I have ever checked.

15 MR. HURAND: Your Honor, just as background,
16 there's a second IP address on that exhibit that is also
17 the second IP address on the subpoena and that's the
18 72.227.210.194.

19 THE COURT: And you said that's also on what
20 other document?

21 MR. HURAND: The tab 13 of our so-called
22 evidence book that we used at the March 6th hearing that
23 lists some lookup information in an attempt to locate
24 geographically, certain IP addresses.

25 MR. MCDONNELL: And I don't know -- I have one

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1 -- I have one cable, one phone, one internet line. So I
2 don't know how there could be two IP addresses. I have
3 one line.

4 MR. HURAND: And Mr. McDonnell, how do you
5 access the internet since the beginning of 2017?

6 MR. MCDONNELL: Have I accessed it?

7 MR. HURAND: How have you accessed it?

8 MR. MCDONNELL: Through a computer.

9 MR. HURAND: Were you accessing the internet
10 through your computer at home?

11 MR. MCDONNELL: I access the internet every
12 time that I do my legal work or go online in reference to
13 this case. That's the only reason I go online.
14 Sometimes read the local paper and that's about it but
15 everything -- any time that I have accessed it has been
16 from my kitchen table where I do my kitchen table where I
17 do my legal work, in my home, under the IP address that
18 my home is under.

19 MR. HURAND: And that's during the whole of
20 2017?

21 MR. MCDONNELL: Yeah, I -- I don't leave my
22 house outside of work. Anytime I have accessed the
23 internet has been under the roof of this home.

24 MR. HURAND: And --

25 MR. MCDONNELL: I don't have any mobile

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1 devices. I haven't since 2013 when I beat cancer. The
2 reason being, I am not crazy, just my phone stopped
3 ringing when I was sick and I realized if no one wanted
4 to call me when I was sick, I don't need a phone. That's
5 why I don't have any mobile devices, never did. Don't
6 believe in them.

7 MR. HURAND: What's the device that you had the
8 two-factor authentication through?

9 MR. MCDONNELL: It was offline with no service,
10 iPhone that was given to me from my son because he had
11 upgraded his service and had a phone. It was just a
12 thing that I used for that because you need some type of
13 device to download any type of two FA type of protection
14 or things of that nature. But I had no internet access.
15 I had no account, nothing attached to it. It was the
16 device that had electricity and anything -- you could,
17 you know, just basically download the things that you
18 need to protect your online account.

19 MR. HURAND: And did you connect the smart
20 phone through your home WiFi?

21 MR. MCDONNELL: I guess it would have to
22 probably be connected. That's the only thing that would
23 have to be connected in order to get the services, you
24 know, like Google authentication and things like that,
25 you have -- but in terms of computers and stuff, I have

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1 one little laptop that I borrowed from somebody that I am
2 using for this case.

3 MR. HURAND: And so for the entirety of 2017,
4 you accessed the internet only through your home internet
5 access?

6 MR. MCDONNELL: Through the IP address that is
7 paid through Spectrum. That IP address is the address
8 that I use for internet access. I don't carry a mobile,
9 so I can't hotspot and all those things. I don't do
10 that.

11 MR. HURAND: and whose account is that Spectrum
12 account?

13 MR. MCDONNELL: My son Patrick's. Under his
14 Social Security number, his date of birth, everything,
15 his email and all that. None of the emails that you
16 relate to in that subpoena has anything to do with my
17 son's account.

18 MR. HURAND: And do you make -- but you make
19 use of that account?

20 MR. MCDONNELL: I use, I guess, my portion of
21 the account, as well as the other parties in the house
22 (indiscernible).

23 MR. HURAND: And Coin Drop Markets used that
24 account?

25 MR. MCDONNELL: I don't believe Coin Drop

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1 Markets or CabbageTech ever used the telephone. It was
2 an internet-based business through a website that, you
3 know, people paid, you know, willingly. It wasn't -- we
4 weren't out there solicitation -- soliciting with market
5 materials. The only market materials were the websites
6 that no longer exist.

7 MR. HURAND: And the internet access that Coin
8 Drop Markets had was this internet access that we're
9 talking about from your -- inside your home using your
10 son's account?

11 MR. MCDONNELL: I would assume.

12 MR. HURAND: And no others?

13 MR. MCDONNELL: No. I use one internet
14 provider, that's it.

15 MR. HURAND: Um.

16 MR. MCDONNELL: I know where you're going with
17 it and I am being honest with you.

18 MR. HURAND: And do you have the account number
19 for that Spectrum account?

20 MR. MCDONNELL: I do but I am not giving it to
21 you because once again, it's my son's. He's the
22 subscriber and if you have -- if you want consent to that
23 account, you're going to have to ask my son.

24 THE COURT: Mr. McDonnell, no one is looking to
25 -- they're not looking for information on your son but to

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1 the extent that you may have been using an account
2 associated with your son in which he was the subscriber,
3 but if you were using it for business --

4 MR. MCDONNELL: I understand that.

5 THE COURT: -- purposes, then the CFTC would be
6 entitled to it. So you have to understand that we're not
7 looking --

8 MR. MCDONNELL: Like I (indiscernible) I said
9 that I don't, you know, believe that I ever used the
10 phone or anything of that nature. I think that the CFTC,
11 if they're looking for something that has four other
12 people -- three other people attached outside of me,
13 should come with the who, what, where, why, time, date,
14 what they're looking for, the specifics of what they're
15 looking for, not a fishing expedition. It's just that,
16 you know, the sheer specifics -- you know, like you said
17 before when I referenced Exhibit 13, you said because
18 it's not in front of the Court, that it's basically like
19 irrelevant.

20 Well, he's referring to things and paperwork
21 and stuff that's not in front of the Court as well and I
22 am asking through my -- there's nothing I am
23 (indiscernible).

24 THE COURT: I didn't say that Exhibit 13 was
25 irrelevant. I said I didn't have it, so I didn't know

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1 what you were referring to.

2 MR. MCDONNELL: No, but what he stated too,
3 what he was quoting we don't have either in front of any
4 of us -- for him, he said that he has documents that he
5 is in possession from his investigation that indicate
6 that my phone number or my internet provider was used.
7 We're not in possession to even know that's true. None
8 of us are in possession of that.

9 MR. HURAND: Your Honor, just on that point, we
10 received productions from third parties and then we have
11 provided those to Mr. McDonnell.

12 MR. MCDONNELL: Well, anyhow, even if I was in
13 possession, the Court is not in possession of them.

14 THE COURT: Well, we can --

15 MR. MCDONNELL: My point is this --

16 THE COURT: -- drag this --

17 MR. MCDONNELL: -- I am glad that nothing --

18 THE COURT: -- we can make this --

19 MR. MCDONNELL: -- (indiscernible) your Honor
20 that --

21 THE COURT: -- easy, Mr. McDonnell or we can
22 make it hard.

23 MR. MCDONNELL: I'm trying to make it easy,
24 your Honor, but I am not trying to violate other people's
25 rights. You know, the thing is this, in the end, the

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1 world is going to see in my opinion that I wasn't
2 supposed to be in this position in the first place. So
3 to have other people included in my family, to violate my
4 family, and to do things like that when I declare that I
5 did not use this phone in any of the alleged acts that
6 they are -- like they don't even have an alleged act of
7 what my phone was used for.

8 There's no mention in the complaint that I used
9 the telephone. If you look at their recent requests and
10 their previous requests, there was no mention to a
11 telephone until I came at that with the motion to
12 dismiss. This has nothing to do with that type of
13 evidence.

14 The initial states of -- state of any type of
15 investigative period would be to go to the normal things,
16 to telephone, the internet, those things. They weren't
17 requested previously because they were satisfied with the
18 fact according to Exhibit 13, that they had that data but
19 now that it benefits them to see who I am working with
20 legally because I am becoming a fight and I am no longer
21 illiterate, they want to know exactly who I am dealing
22 with, what I am dealing with, how am I gathering my
23 information. They're asking me for information on my
24 defense. They're asking me for a whole bunch of stuff
25 that violates -- how can I defend myself if the plaintiff

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1 has my defense?

2 THE COURT: They're not going to get your
3 defense because what they are seeking in this subpoena is
4 account pedigree information. It's not content of
5 communications. It's to be able to tie certain accounts
6 to you. That's what they're seeking.

7 MR. MCDONNELL: (Indiscernible).

8 THE COURT: And I am trying to accommodate the
9 interests on both sides. I don't know that the CFTC
10 needs to list all of these email accounts as relevant
11 subscribers. For example, if --

12 MR. MCDONNELL: (Indiscernible).

13 THE COURT: -- the relevant subscriber is
14 Patrick K. McDonnell residing at 20 Rawson Place and if
15 that is how the information is maintained by Charter,
16 then to the extent that Patrick K. McDonnell was the
17 subscriber for CoinDropMarkets@gmail.com for CDM@gmx.us,
18 presumably, that information is going to be retrievable
19 by subpoenaing information relating to Patrick K.
20 McDonnell at a certain address.

21 MR. MCDONNELL: (Indiscernible).

22 THE COURT: But the way this is written, the
23 CFTC is defining each of these email addresses and
24 telephone numbers and IP addresses as relevant
25 subscribers. So theoretically, there could be over a

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1 dozen different relevant subscribers here. And the Court
2 does not have --

3 MR. MCDONNELL: I (indiscernible) what --

4 THE COURT: -- sufficient information on each
5 of these alleged relevant subscribers to be able to
6 conclude that Mr. McDonnell should be compelled to
7 provide a consent.

8 MR. HURAND: Your Honor, if I -- with the
9 Court's permission, it may be efficient just to confirm
10 which of these email accounts Mr. McDonnell has used in
11 connection with his dealings and then which of these
12 telephone numbers he has because it may be that these are
13 all his.

14 MR. MCDONNELL: The telephone number that I use
15 is 718-524-6312. Now if you're going to request
16 something under me, being notified that that's my son's
17 number, then request it without the phone number and the
18 information that he wrote. But to request it under the
19 phone number that you know for a fact, and I can send you
20 the bill that it's his, is one thing.

21 Like the other stuff you're requesting, you
22 have the right to do all of that, according to what I
23 think and what the judge is saying. But you should do it
24 without the phone number that you know is my son, you
25 know, being the subscriber. That's fair. Then you could

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1 do whatever you want but to include his phone number when
2 you know that that is his account is just a violation of
3 his privacy rights under everything the Constitution
4 says.

5 THE COURT: Well, assuming --

6 MR. MCDONNELL: And that's what I am saying
7 (indiscernible) --

8 THE COURT: -- assuming you even had --

9 MR. MCDONNELL: -- I am not (indiscernible).

10 THE COURT: -- standing to assert his privacy
11 rights, you don't.

12 MR. MCDONNELL: I am sorry (indiscernible).

13 THE COURT: He has his own rights but I am
14 trying to come up -- I am trying to narrow this to
15 accommodate everyone's interest, even the interest --

16 MR. MCDONNELL: May I make --

17 THE COURT: -- of those --

18 MR. MCDONNELL: -- a suggestion?

19 THE COURT: Mr. McDonnell?

20 MR. MCDONNELL: As you could see
21 (indiscernible).

22 THE COURT: Mr. McDonnell, would you stop
23 interrupting the Court?

24 MR. MCDONNELL: I'm sorry.

25 THE COURT: As I said, I'm trying to

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1 accommodate the interest of everyone, including those who
2 are not even before the Court now.

3 MR. MCDONNELL: Okay.

4 THE COURT: So let's focus on what is
5 undisputed are accounts connected to you. And let's do
6 this quickly because this is just one of numerous
7 applications --

8 MR. MCDONNELL: Right.

9 THE COURT: -- that are pending before me and I
10 don't I have all night to address this.

11 Mr. Hurand, do you have specific questions for
12 Mr. McDonnell?

13 MR. HURAND: Mr. McDonnell, are there any
14 emails here that you have not used in connection with,
15 you know, virtual currency dealings?

16 MR. MCDONNELL: Can you say that --

17 MR. HURAND: [CoinDropMarkets@gmail.com?](mailto:CoinDropMarkets@gmail.com)

18 MR. MCDONNELL: That's the company's email.

19 MR. HURAND: What about [PatMcDonnell@gmx.us?](mailto:PatMcDonnell@gmx.us)

20 MR. MCDONNELL: I don't recognize it.

21 MR. HURAND: Have you ever -- so you've never
22 used that one?

23 MR. MCDONNELL: I don't recognize it. I don't
24 believe I ever used it because I don't recognize it.

25 MR. HURAND: [CDM@gmx.us?](mailto:CDM@gmx.us)

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1 MR. MCDONNELL: That's my legal.

2 MR. HURAND: Before this case was filed, did
3 you have that address?

4 MR. MCDONNELL: Yes, I had that address because
5 it was the address that we used for the PayPal account.
6 You know that.

7 MR. HURAND: And that's an account you used for
8 the Coin Drop Markets' business?

9 MR. MCDONNELL: I used it like I told you,
10 strictly for PayPal. That was it. We've been through
11 this, Gates.

12 MR. HURAND: Is CTCMembership@gmx.com an email
13 address that you used for your business dealings?

14 MR. MCDONNELL: I don't recognize that either.

15 MR. HURAND: Is KingMcDonnell@gmx.com an email
16 address that you've used for your business dealings?

17 MR. MCDONNELL: I would never relate to myself
18 as a king.

19 THE COURT: That wasn't the question.

20 MR. MCDONNELL: I don't recognize it, no.

21 MR. HURAND: And that's
22 DeafDollarsDove@gmail.com (ph.), is that ever -- is that
23 an account that you've ever used for virtual currency
24 dealings?

25 MR. MCDONNELL: I don't recognize that either.

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1 MR. HURAND: For the telephone numbers -- the
2 telephone number 718-524-4718, have you ever used that
3 number?

4 MR. MCDONNELL: I don't recognize that.

5 MR. HURAND: The number 929-428-6422, have you
6 ever used that number?

7 MR. MCDONNELL: I don't recognize that.

8 MR. HURAND: The telephone number 347-857-6043,
9 have you ever used that number?

10 MR. MCDONNELL: I don't recognize that, as
11 well.

12 MR. HURAND: What about the number 888-614-
13 6445?

14 MR. MCDONNELL: I do not recognize that, also.

15 MR. HURAND: That's not a Coin Drop Markets
16 number?

17 MR. MCDONNELL: I don't recognize it, no. It
18 could be. I don't recognize it at this moment in my
19 life.

20 MR. HURAND: Is there anywhere that you could
21 look to confirm whether you've ever used those numbers?

22 MR. MCDONNELL: I could check for the 888
23 number. I wouldn't know it offhand but I don't recognize
24 it off my memory but I could check on that but the other
25 ones, I don't recognize.

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1 MR. HURAND: Do you have any way of checking
2 the other ones?

3 MR. MCDONNELL: I don't believe so. I don't
4 believe I possess enough specific information to
5 recognize that, no.

6 MR. HURAND: What about 1-888-624-6445?

7 MR. MCDONNELL: Off my head, I don't recognize
8 but I will research it, if you want. If you want to send
9 it through my email and I will get back to you.

10 THE COURT: Do you have any further questions
11 for Mr. McDonnell?

12 MR. OAKLAND: Mr. McDonnell, this is David
13 Oakland.

14 MR. MCDONNELL: Hi, David.

15 MR. OAKLAND: Hi. Are there documents you are
16 going to review in order to ascertain the status of those
17 numbers?

18 MR. MCDONNELL: No, I would actually go online
19 and look at what's left in terms of pictures and stuff
20 that, you know, people may have posted and see if the
21 number coincides that the number you give me. I don't
22 believe there would be any documents to anything.

23 THE COURT: All right. So is the CFTC prepared
24 to narrow the subpoena?

25 MR. HURAND: Yes, your Honor. I think if we

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1 could begin with seeking -- with respect to the
2 CoinDropMarkets@gmail.com account, the CDM@gmx.us account
3 but then removing the others, as ways of identifying
4 relevant subscribers and then identifying only the number
5 that Mr. McDonnell could recall on this telephone call
6 and then leaving the IP addresses, the first two that we
7 have listed in our so-called evidence book and dropping
8 the third, leaving only his name, address, those two
9 email addresses, the one telephone number and the two IP
10 addresses is a way to limit the definition of relevant
11 subscriber.

12 THE COURT: Well, this sounds reasonable to me
13 and perhaps adding the 888 phone number or phone numbers,
14 assuming that those were associated with the defendant
15 entity, if to the extent that Mr. McDonnell is going to
16 go online to see if those were phone numbers associated
17 with the business, isn't that something that the CFTC
18 could do and then just satisfy the Court with a link?

19 MR. HURAND: Yes, your Honor. We can look into
20 tying those numbers to -- in some way to the business.

21 THE COURT: Well, I am prepared to approve a
22 subpoena that's narrowed as the CFTC has proposed,
23 possibly including the 888 numbers and since Charter is
24 going to require a consent from the subscriber, given the
25 discussions that we have had now and Mr. McDonnell's

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1 statements, I am going to require that he provide such
2 consent and I will note, Mr. McDonnell, that although the
3 time period is from 2016 until the present, that that --
4 that this is simply, so-called account pedigree
5 information, to show -- to connect you to that account.
6 It is not content. So that --

7 MR. MCDONNELL: Your Honor, all my legal calls
8 on that -- that line. I have no problem with
9 (indiscernible).

10 THE COURT: But your legal calls are not going
11 to be reflected in the information that's being sought.

12 MR. MCDONNELL: They're not going to receive
13 any phone numbers?

14 THE COURT: Would the usage records include
15 phone numbers? Let me --

16 MR. HURAND: Your Honor, I am not sure but I
17 believe that they would, although, you know, our position
18 would be that the mere existence of a communication --
19 the mere fact of it is not privileged. It would be the
20 contents of it and we're not getting any of the content.

21 MR. MCDONNELL: That's not the case when you
22 can just run any phone number through Google and see what
23 the attorney's name is that I might be, you know, just
24 talking to or something of that. A phone number
25 identifies people and I don't want you knowing my

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1 defense. I don't want you knowing the lawyers that, you
2 know, maybe I called up and asked for some guidance or,
3 you know, references or something. And I don't believe
4 that you have the right to that.

5 THE COURT: Mr. McDonnell, when did you start
6 calling lawyers?

7 MR. MCDONNELL: I've been calling lawyers from
8 day one, from them telling me they don't want to handle
9 my case. They don't have enough money. I have spoken to
10 a --

11 THE COURT: When -- don't tell me day one.
12 Tell me a date.

13 MR. MCDONNELL: It would have been the first --
14 from the initial date that we had our first
15 communications by telephone, I would say in early --
16 maybe mid-February or maybe early February. I don't have
17 the exact date right now.

18 THE COURT: So let me ask the CFTC, do you
19 really need to have this information through the present
20 or can it go through January of 2018?

21 MR. HURAND: We agree to that, your Honor.

22 THE COURT: All right, so --

23 MR. MCDONNELL: That's fair.

24 THE COURT: So the subpoena and the consent
25 will cover the reduced list of relevant subscribers for

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1 the time period from January 2016 through January 2018
2 and I am requiring that Mr. McDonnell sign a consent to
3 the production of this information.

4 MR. MCDONNELL: Well, I am going to have to
5 have my son sign that.

6 THE COURT: Excuse me?

7 MR. MCDONNELL: My son would sign the consent,
8 right?

9 THE COURT: I wasn't --

10 MR. MCDONNELL: (Indiscernible)?

11 THE COURT: He's not a party before the Court.
12 I am requiring that you sign it.

13 All right. So let's turn to some of the
14 remaining issues before the Court. I'm looking now at
15 docket entry 102 which is the CFTC's letter of May 25th.
16 That responded to Mr. McDonnell's letter regarding
17 Charter which we have now addressed but it also includes
18 requested relief concerning other subpoenas, specifically
19 a subpoena on Twitter for content relating to the Twitter
20 account, Coin Drop Markets, as well as a subpoena to
21 Google concerning the Coin Drop Markets business email
22 account, CoinDropMarkets@gmail.com.

23 And apparently, the service providers are not
24 satisfied with the consents that have been provided by
25 Mr. McDonnell. They want a response to their emails

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1 concerning these accounts.

2 Mr. McDonnell, have you received those emails?

3 MR. MCDONNELL: No, because I don't have access

4 -- I haven't accessed that Gmail account that they're

5 saying they sent to and I don't recognize CDM@gmx.com.

6 The reason I had .us was because CDM@gmx.com was not

7 available.

8 THE COURT: Well, is --

9 MR. MCDONNELL: That (indiscernible).

10 THE COURT: -- the --

11 MR. MCDONNELL: -- (indiscernible) provide

12 (indiscernible).

13 THE COURT: The Gmail account that you don't

14 have access to, you now know how --

15 MR. MCDONNELL: They gave me the instructions

16 in the document to you.

17 THE COURT: All right. So are you prepared

18 then to reestablish access and to respond to that

19 subpoena?

20 MR. MCDONNELL: Yes, if I am supposed to, your

21 Honor, absolutely. If I have grounds not to, I would

22 like to, you know, object but if that -- you know, I am

23 not -- I have no problem with them having that account.

24 I honestly just didn't know -- I didn't know -- not that

25 I didn't know, I didn't look into the recovery process.

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1 So they looked into the recovery process. They went to a
2 specialist. The fairest thing for me to do would be to
3 figure out how to do it, click the email and let them get
4 the information they requested.

5 THE COURT: Well, I did order you to provide a
6 consent. We already litigated that issue. And ow it's
7 simply that the service provider is asking for another
8 step and so I don't want to relitigate that issue since
9 there is a way --

10 MR. MCDONNELL: That's (indiscernible).

11 THE COURT: -- since this is information within
12 your custody, possession or control since you could
13 access it.

14 MR. MCDONNELL: If I (indiscernible).

15 THE COURT: I am directing that you access that
16 CoinDropMarkets@gmail account and respond --

17 MR. MCDONNELL: I will (indiscernible).

18 THE COURT: -- to Google, so that they'll
19 release that information and after the CFTC obtains it,
20 it will provide you with a copy of it.

21 MR. MCDONNELL: Okay.

22 MR. HURAND: Your Honor, on the point of the
23 CoinDropMarkets@gmail.com email address, Google, somewhat
24 as an additional burden asked for entry of a consent
25 order as well and they even contacted me today to ask for

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1 the addition of one extra paragraph to the order and so
2 with the Court's permission, I would resubmit that
3 document.

4 THE COURT: Well, their consent form, if I
5 recall correctly, they're asking for a lot of information
6 that I don't know that I am prepared to order and as far
7 as I am concerned, if they want to litigate this, if they
8 have lawful consent, they can certainly say we don't want
9 to provide this information until we notify the
10 subscriber and see if there is an objection from the
11 subscriber.

12 If they want to do that, and say we'll wait,
13 you know, five -- we'll wait two business days and see if
14 there is an objection and they get no objection, they get
15 no objection, then they should produce it. They don't
16 get to dictate the terms of the consent.

17 MR. MCDONNELL: I --

18 THE COURT: If the Court has ordered Mr.
19 McDonnell to consent, he's provided a consent form and at
20 some point it's up to the Court and not up to them, they
21 can't start -- it's not up to them to start providing all
22 kinds of qualifications and conditions.

23 MR. HURAND: Yes, your Honor.

24 THE COURT: And if they would like to appear in
25 court and show cause why what I have just suggested isn't

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1 sufficient, then they can do so.

2 MR. HURAND: I will convey that to counsel.

3 THE COURT: And please let the Court know as
4 soon as possible because we are running out of time,
5 given Judge Weinstein's schedule. We need --

6 MR. HURAND: And --

7 THE COURT: The case law is clear that as long
8 as they have lawful consent -- Mr. McDonnell has objected
9 but he has been ordered by the Court to provide consent
10 and the Court has the legal authority to do that, as part
11 of the discovery process. They have lawful consent.

12 If they want to make sure that there's not an
13 objection, as I said, I am prepared to give them an
14 opportunity to notify the subscriber and see whether
15 there's any objection but absent that, I expect that
16 there will be producing the documents.

17 MR. HURAND: Yes, your Honor. And in terms of
18 the Twitter response, along the same lines as to Google?

19 THE COURT: Well, we have another issue with
20 the Twitter which is that Mr. McDonnell says that he does
21 not have access to that GMX account. Let me just -- am I
22 remembering correctly what your position is, Mr.
23 McDonnell?

24 MR. MCDONNELL: Yeah, I -- the reason I had
25 registered CDM@gmx.us is because the .com wasn't

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1 available. I actually went onto GMX and tried to access
2 this account they're talking about with my password, just
3 to see if maybe I forgot and it wouldn't go through. I
4 think that maybe Twitter made a mistake and put the .com
5 instead of the .us honestly.

6 MR. OAKLAND: Mr. McDonnell, this is David
7 Oakland again.

8 MR. MCDONNELL: Hi, David.

9 MR. OAKLAND: Have you previously received
10 communications -- last year when the Twitter was in
11 effect.

12 MR. MCDONNELL: Yeah.

13 MR. OAKLAND: Did you receive communications
14 from Twitter at your CDM@gmx.us account?

15 MR. MCDONNELL: I don't think so, no, because I
16 was doing PayPal on that. That's why I -- I believe that
17 that Twitter account is set up under
18 CoinDropMarkets@gmail.com. I believe that's the handle
19 for that account.

20 MR. OAKLAND: So if Twitter for some reason has
21 a clerical error in their records, as to which email
22 address is the correct email -- let's say for example,
23 for whatever reason, somehow it got entered as
24 CDM@gmx.com --

25 MR. MCDONNELL: Okay.

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1 MR. OAKLAND: -- instead of gmx.us, you're not
2 saying that that was not -- that that Twitter account was
3 not --

4 MR. MCDONNELL: I'm saying that it struck me as
5 odd to see the .com, so the only thing that I thought
6 just first thing in my head was that they -- not even
7 looking at the content of the situation, just the email
8 address, I said maybe they just, you know -- it would be
9 a common mistake for a person to put .com versus .us. So
10 that was why I -- that was just what I concluded but it
11 might not be true at all. That's just me just thinking,
12 you know, seeing something that is odd to me and just
13 coming to a conclusion.

14 THE COURT: And Mr. McDonnell, why are you now
15 unable to access your Twitter account?

16 MR. MCDONNELL: No, I am -- that Twitter
17 account doesn't exist no more. It hasn't existed for a
18 long time. The thing I am saying is the CDM@gmx they're
19 saying is the access email for that Twitter.

20 THE COURT: No, I understand that but you -- so
21 you have no way of using the gmx.us email, you have no
22 way of accessing stored communications from twitter.
23 Those would all be in the hands of the third-party
24 provider, Twitter.

25 MR. MCDONNELL: Yeah, I actually tried to

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1 access that gmx.com account just to see if, like I said,
2 I forgot it with, you know, just some passwords that
3 could I remember and there was no -- there was no access.

4 I don't believe I ever owned it. I believe
5 from my recollection that I had registered the .us
6 because the .com wasn't available.

7 MR. OAKLAND: Mr. McDonnell, this is David
8 Oakland again. Have you did -- did you receive any email
9 from Twitter in the last, you know, two to three weeks?

10 MR. MCDONNELL: In regards to what?

11 MR. OAKLAND: Your CDM@gmx.us account, the one
12 that you still have --

13 MR. MCDONNELL: No, absolutely not, no.

14 MR. OAKLAND: So they have not sent anything to
15 that account.

16 MR. MCDONNELL: No, not at all.

17 MR. OAKLAND: So if it's an error deeply
18 embedded in Twitter's files.

19 MR. MCDONNELL: Yeah, and I don't know if it's
20 an error or not in terms of how they put it there but I
21 am -- that's just an assumption.

22 THE COURT: Well, again, I would say that if
23 Twitter has Mr. McDonnell's consent and they've got no
24 response from the gmx.com email, they can try gmx.us. If
25 they get no objection, then they should produce the

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1 records based on the consent -- the court-ordered consent
2 that he's provided.

3 MR. OAKLAND: Thank you.

4 THE COURT: All right. Is the next issue, is
5 that the most recent motion that's come in?

6 MR. HURAND: Yes, your Honor.

7 THE COURT: Oh, we have -- I am sorry. We have
8 Mr. McDonnell's motion with respect to a Capital One
9 account but the CFTC states that it is not subpoenaed
10 Capital One. So, Mr. McDonnell, what is the basis for
11 your belief that Capital One has been subpoenaed?

12 MR. MCDONNELL: Well, they had presented
13 Capital One in one of their exhibits to me. They've
14 since answered their -- they since answered and
15 clarified, you know, that they haven't subpoenaed it and
16 that they don't have -- they're not in possession of
17 anything. So I mean I really don't have an argument at
18 this point because they clarified -- they answered the
19 question and they clarified.

20 THE COURT: And I do want to state you've asked
21 the Court to conduct an audit of all of their subpoenas.

22 MR. MCDONNELL: Yes.

23 THE COURT: The Court does not sit to audit all
24 discovery that takes place. The Court relies on the good
25 faith of --

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1 MR. MCDONNELL: Right.

2 THE COURT: -- the parties and here the CFTC
3 has represented to the Court that anytime it's served a
4 subpoena, that it has served notice on you of that
5 subpoena and that after it has obtained documents in
6 response to a subpoena, those documents have been
7 produced to you and will the CFTC please confirm that?

8 MR. HURAND: Yes, your Honor. This is Gates
9 Hurand. That's been our practice thus far and I think we
10 have some, you know, another production coming.

11 THE COURT: But there --

12 MR. MCDONNELL: Your Honor?

13 THE COURT: -- are no subpoenas that have been
14 served for which Mr. McDonnell has not been provided
15 notice. Is that accurate?

16 MR. HURAND: Yes, first on the point of notice,
17 that is accurate. We have noticed him before the serving
18 the subpoenas in each case.

19 THE COURT: So given those representations,
20 anytime Mr. McDonnell has had a problem with any of the
21 subpoenas, he clearly has not been shy about writing to
22 the Court and complaining about the subpoenas. I am not
23 going to back now over prior history. If there are
24 specific issues with specific subpoenas, I have heard
25 them. I will hear them but I am not simply going to do

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1 an overall review of every subpoena that has been served
2 in the case.

3 MR. MCDONNELL: Can I ask this, your Honor?
4 So, you know, outside of all that, you know -- and I
5 agree with you on that, the last sentence, I asked just
6 for like, you know, so we don't end up in this type of
7 situation where I'll write the Court. Like, twenty-four
8 hour notice, like they could just send the subpoena
9 they're going to send me, just for an inspection that
10 we're not going to run into any problems is what I am
11 looking for and I don't think --

12 THE COURT: They just said that they've been
13 sending you notice before they even serve the subpoena.

14 MR. MCDONNELL: N, I know they send the notice
15 correctly and they definitely do do that but the fact is
16 is sending notice and the notice of requesting
17 information that I object to like we're going through
18 right now, is the issue -- is the reason that I just --
19 would just like someone just to look at it for two
20 seconds. Okay, they're within their rights and Mr.
21 McDonnell will have no objection or no right to file a
22 motion on this.

23 To pre -- you know, to -- just to prevent
24 future issues like this, I am just asking for someone to
25 give a quick glance and then, you know -- and then they

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1 would subpoena the thing and then they would go through
2 it. I'm not saying that they haven't subpoenaed me
3 correctly. They are correct in what they're saying, when
4 they did serve me, they served me with that and they did
5 everything.

6 My main concern is to prevent issues of us --
7 you know, like the serving of the subpoena is one thing
8 but then the information request of the subpoena is where
9 the arguments for the objection seem to start. So I was
10 just asking for that type of relief, just to
11 (indiscernible).

12 THE COURT: Well, I am not -- if you're asking
13 the Court going forward to review every subpoena that's
14 served, the answer is that is not the role of the Court,
15 and this Court will not do it.

16 MR. MCDONNELL: Okay.

17 THE COURT: If they serve you with a subpoena,
18 and you have an issue with it, first of all, you should
19 talk with them about it to see whether it's something
20 that you can resolve with the CFTC before making an
21 application to the Court.

22 If you can't resolve it, then you can make an
23 application to the Court. I can assure you, third
24 parties who are subpoenaed do not immediately produce
25 records. So if you're given notice before they serve the

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1 subpoena --

2 MR. MCDONNELL: Okay.

3 THE COURT: -- I think you can be fairly
4 confident that if you send a notice -- if you make a
5 motion to the Court, you're going to --

6 MR. MCDONNELL: Right (indiscernible) action.

7 THE COURT: -- the Court is going to see that
8 before the documents are produced.

9 MR. MCDONNELL: Okay. I agree.

10 THE COURT: All right. So the last item on the
11 agenda is the CFTC's letter of May 30th and Mr.
12 McDonnell's response of May 31st. This concerns Mr.
13 McDonnell's response to the interrogatories and document
14 demands. The Court's May 17th order directed Mr.
15 McDonnell on pain of sanctions to respond to any
16 outstanding discovery request by May 28th.

17 As of May 28th, Mr. McDonnell according to the
18 CFTC and it's undisputed by him, had not produced any
19 responsive materials or answers to the interrogatories.
20 After the close of business the next day, the CFTC
21 emailed Mr. McDonnell to notify him that he had not
22 received responses and an hour later, Mr. McDonnell
23 emailed two pdfs purporting to be his responses. Those
24 have been produced to the Court by the CFTC. The
25 responses to the interrogatories -- every single one of

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1 them, without exception reads, "Defendant does not
2 possess enough specific information to answer this
3 question." That is the response to thirteen different
4 interrogatories.

5 The demand for documents, each one of those
6 demands has prompted a response. Defendant does not
7 possess enough specific information to answer this
8 question. These are not even questions, they're document
9 demands but he -- Mr. McDonnell has responded to the
10 document demands with the same exact response that he
11 used in responding to the interrogatories.

12 In his response, he -- Mr. McDonnell claims
13 that defendant in no way willfully violated the Court's
14 order. Any outstanding discovery request was satisfied
15 within an hour of plaintiff's reminder/request, and he
16 refers to this as a simple oversight.

17 As I said earlier, given the history of this
18 case, it strains credulity to suggest that this was just
19 an oversight but in any event, even if it was an
20 oversight, the responses in no way satisfied the
21 defendant's obligations. These were not good faith
22 responses.

23 And Mr. McDonnell, you claim that you're
24 getting legal advice. I don't know who is giving you
25 legal --

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1 MR. MCDONNELL: That's right.

2 THE COURT: -- advice but let me just say this,
3 that that pattern of responding to the discovery demands
4 is not a good faith response.

5 MR. MCDONNELL: Okay.

6 THE COURT: And it may well be that for certain
7 questions, you don't recall any information and it -- you
8 don't even say I don't recall the specifics but in
9 general, I recall the following. This is just --

10 MR. MCDONNELL: Your Honor, if I could answer
11 that.

12 THE COURT: -- the back --

13 MR. MCDONNELL: I'll go every question with you
14 and tell you why because like they're asking me to
15 identify persons with knowledge or any information I have
16 used that makes the Court (indiscernible).

17 THE COURT: Who worked for your company?

18 MR. MCDONNELL: I'm -- nobody, it was just me.
19 That's what I mean.

20 THE COURT: Then --

21 MR. MCDONNELL: Like they're asking for -- you
22 know, my company didn't trade cryptocurrency for people.
23 So they're asking for information on people that I traded
24 for, my company traded for and I don't possess enough
25 specific information to answer that because my company

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1 didn't do that.

2 And then when it comes to things like the
3 identity of all documents, I clearly stated to them many
4 times that whatever documents or whatever information
5 pertaining to customers would be in PayPal or would be in
6 the Coin Drop Markets' gmail. That's all that's left of
7 it. And I've been honest with that.

8 So basically, they've been provided with that
9 information. I don't possess anymore or enough specific
10 information to answer that question and that's where I
11 say things become redundant because, you know, like
12 there's so many things on there that have already been
13 addressed.

14 And even if you look at the -- I don't know how
15 to pronounce it, the interrogatories, and the other
16 document where they're asking the question, there's some
17 similar questions just on each one that are kind of like
18 pertaining to the same thing, you know, and that's what I
19 mean -- you know, that's how I am saying that, like, you
20 know, this -- for instance, number two, it says all
21 documents and communications leading to accounts under
22 the name or control of McDonnell. What accounts? Like
23 what specific accounts? Do you want like -- if I had an
24 EZ Pass, do you want that?

25 Like I provided everything that I was supposed

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1 to in terms of the business accounts and everything that
2 I was supposed to in terms of the authorization. So to
3 me, what I am looking at this, just as a person that is
4 being requested, the information, I don't have that
5 information.

6 THE COURT: Mr. McDonnell --

7 MR. MCDONNELL: (Indiscernible).

8 THE COURT: -- you know, the discovery demands
9 include definitional sections. So you say that what
10 accounts do they mean and I am flipping back because it's
11 -- although the specific demands, there aren't that many,
12 it is a long document because there are -- there's a
13 definitional section including on page 2 of 10, item
14 number 3, the term account or accounts refers broadly to
15 all manner of accounts, actual currency, virtual currency
16 or otherwise --

17 MR. MCDONNELL: All right, yes.

18 THE COURT: -- including without limitation --

19 MR. MCDONNELL: They have all that. I provided
20 all that.

21 THE COURT: Please stop interrupting. You
22 wanted to know what accounts meant.

23 MR. MCDONNELL: I'm sorry.

24 THE COURT: I am reading the definition now.

25 MR. MCDONNELL: Okay.

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1 THE COURT: Including without limitation,
2 commodities, futures, and options accounts, brokerage
3 accounts, trading accounts, virtual currency wallets,
4 exchange accounts, securities accounts and bank accounts.
5 So there is your definition.

6 MR. MCDONNELL: They have (indiscernible). He
7 has -- and I recently filed bankruptcy and I put every
8 account on there and I don't possess any of those
9 accounts now.

10 THE COURT: Well, the bankruptcy court is an
11 entirely separate body from the CFTC.

12 MR. MCDONNELL: No, but I just don't possess
13 them -- I don't have -- I don't have banking accounts, I
14 don't have stock accounts, I don't have options accounts.
15 I don't -- I am not there. I don't do that. So I can't
16 produce that, so therefore again, I don't possess enough
17 specific information to answer that because I don't have
18 that.

19 THE COURT: Well, let's not talk in the future
20 tense --

21 MR. MCDONNELL: I don't (indiscernible).

22 THE COURT: -- because the subpoena -- excuse
23 me, the discovery demands relate to a period of time and
24 now I don't have in front of me the -- the relevant time
25 period for the document request is from January 1st, 2016

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1 to the present, unless noted otherwise in the request.

2 MR. MCDONNELL: Okay.

3 THE COURT: So you're saying now you don't have
4 any accounts.

5 MR. MCDONNELL: No, they have (indiscernible).

6 THE COURT: Did you have accounts within the
7 time period specified?

8 MR. MCDONNELL: And they're in possession of
9 them. They have the Bitrex account and they have the
10 wallet addresses that were not third-party wallets. They
11 were -- they were decentralized wallets. I was -- I -- I
12 do -- I explain this in the Court that I was not a big
13 user of third-party exchanges and I asked them in the
14 courtroom last time, why did he request all this
15 information from companies like Kraken and stuff that I
16 couldn't possibly access from my browser because it's
17 barred because of the New York State regulation, like
18 websites (indiscernible) like you are.

19 I've addressed this with them and I have given
20 them all the information that they've asked for initially
21 when it came to the wallets and it came to transactions
22 and things and we've argued it. And there's no more
23 like --

24 THE COURT: What was the information that you
25 gave them?

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1 MR. MCDONNELL: I gave them everything that
2 they asked for which was the specific wallet addresses
3 and everything that was required in -- there was only two
4 wallet addresses for the company, there was the Bitcoin
5 and a Litecoin address that they had referenced in their
6 complaint and they --

7 THE COURT: Well, the --

8 MR. MCDONNELL: -- asked for (indiscernible)
9 back.

10 THE COURT: -- demand is not limited to the
11 company.

12 MR. MCDONNELL: Yeah, but I don't have any
13 personal is what I am telling you. I don't --

14 THE COURT: Well, you're going back --

15 MR. MCDONNELL: -- I'm not lying to you.

16 THE COURT: -- into the present tense.

17 MR. MCDONNELL: Yeah.

18 THE COURT: We're not talking about just the
19 present.

20 MR. MCDONNELL: My business and my -- my
21 business and my personal was the same thing. I wasn't a
22 huge corporation. Like I was just a regular person with
23 a little newsletter business. That's why when they're
24 coming at me with 30 email addresses and things like
25 this, that's imbalanced, you know, compared to what I

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1 did. I didn't have all those railways and everything.

2 I mean, as everyday goes by it just seems like
3 this case gets bigger on fabrications. I don't possess
4 any spouse accounts, haven't since 1992. I haven't
5 traded stock options. I have never traded an option in
6 my life personally. Things like that I have never -- you
7 know, I don't understand why that would even be
8 (indiscernible).

9 THE COURT: Mr. McDonnell, I don't know what
10 information you have or haven't provided to the CFTC in
11 the past.

12 MR. MCDONNELL: I provided everything I was
13 asked for, ma'am.

14 THE COURT: I don't know what that is but to
15 the extent you may have provided information to them
16 informally, specific information, they're entitled to
17 serve formal discovery demands and get formal responses.

18 MR. MCDONNELL: No, this is formal that I
19 provided. This is under a court order that I provided.
20 I can take the time tonight to find the docket number
21 where I provided all the information to them and we
22 actually had a hearing over it. We argued this point in
23 your courtroom about him saying that I had connections
24 with the Russian nationalism -- nationalists or
25 something.

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1 Like they've been provided with all the
2 information that they requested and this is redundant
3 information. I told them that I am not in possession of
4 the communications and emails and all that stuff and
5 that's why I gave them authorization for all those
6 accounts, so they can go in there and verify whatever
7 they need, the PayPal, the list of the customers, because
8 all the customers came through PayPal, that was -- they
9 signed up through PayPal. They have all the customer
10 information and they know they have all the customer
11 information.

12 THE COURT: Had you been responding to these
13 documents in good faith --

14 MR. MCDONNELL: Yes.

15 THE COURT: -- you would have provided
16 individualized responses to each interrogatory or each
17 document and each document demand. And to the extent
18 that --

19 MR. MCDONNELL: I have read every single one of
20 the (indiscernible).

21 THE COURT: Mr. McDonnell, please stop
22 interrupting the Court.

23 MR. MCDONNELL: Right.

24 THE COURT: To the extent that -- in response
25 to a particular demand or interrogatory, the information

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1 had been provided, you could have said all information
2 responsive to this request was provided to the CFTC on
3 March 16th. I don't remember the exact date, 2018.

4 MR. MCDONNELL: No, I understand.

5 THE COURT: At least then they would have a
6 record that you're saying whatever you provided before,
7 there's nothing else, but you didn't do that and what you
8 did is -- I assume you just kept hitting a repeat button
9 over and over again.

10 MR. MCDONNELL: No, I read every single one
11 specifically, honestly. I really did. And there's
12 really not one -- even -- I spoke to him on the phone
13 yesterday and I told him that I only had a couple of
14 articles printed out from what was going on in the media
15 at the time, whatever was being said about the case and
16 just some things with the chairman going to Washington. I
17 have like six articles and the rest was what they had
18 been sending me.

19 I don't have a defense to this day, your Honor.
20 What defense do I have against these people? What can I
21 subpoena on them? What records, information, can I --
22 how do I defend myself? I still don't know how. That's
23 why I haven't resented them with evidence and things like
24 that because I don't have any. The only evidence I have
25 is how I am being treated by law through this whole case.

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1 That's the only argument I have.

2 The only defense I have is that I am innocent
3 and that I am charged improperly. I have no way to
4 produce any type of evidence or anything against them
5 outside of the misconduct that they have factually
6 performed in many facets of this whole case and I am
7 fighting this. There's no way that I would have
8 willfully not sent these answers or read each one
9 specifically and gave you my honest opinion when I have
10 my whole life at hand.

11 I have a motion to dismiss in front of the
12 Court and I am fighting and I am fighting harder than
13 anybody would ever believe, twelve hours a day. I'm one
14 person doing the work of a full law firm, okay? And they
15 have a lot of people under them to help them and you have
16 to understand the position that I am in today, at 4:58 --
17 at 4:58, my phone was shut off. I had to go across the
18 street and borrow my neighbor's credit card to get the
19 phone on, so this -- I didn't get this case dismissed and
20 I wasn't -- and I didn't look like I was evading. Okay?

21 So I am doing everything that I can do, okay?
22 And I am humbling myself, begging people to borrow their
23 credit card to pay my bills, to be on the phone and to be
24 available, okay, for whatever it is.

25 When you see a defendant does not possess

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1 enough specific information to answer this question, I
2 understand your opinion and yes, I probably could have
3 worded it better in reference to what I did but I viewed
4 it as though I had (indiscernible) information, that I
5 had given that information and I no longer possess that
6 specific information because I had given it to them in
7 the first place.

8 And this isn't -- you know, everybody on this
9 phone is going to move on with their life after this
10 case. This case is going to affect me for the rest of my
11 life. It's destroyed my life. I have no life.

12 And I just wonder when the Court steps in and
13 stops looking at all the he said, she said stuff back and
14 forth and see by the law that I am charged incorrectly.
15 Because at the end of this case, everybody is going to
16 say wow, he was right. And that's just what God is going
17 to do. Nobody can stop God's plan.

18 And I am telling you that I have done
19 everything. I did not willfully violate your order. I
20 would never disrespect the Court and I would never
21 disrespect you. I have answered even their -- this that
22 we're talking about right now. I answered it as quick as
23 I could. And your clerk will tell you that I have been
24 on top of every single response, typically within 24
25 hours. I learned how to do this. I am learning how to

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1 format. I am learning how to use the PDF. I am learning
2 how to do all this and I am getting better at it and I am
3 getting resources.

4 But I need -- there has to be some leniency
5 towards an idiot representing themselves because everyday
6 I am learning and I am learning on the fly. I don't have
7 a core grasp or understanding or intellect of how to
8 interpret this law or how to interpret everything. I am
9 interpreting it to my view of it, same way that they are
10 and I didn't put those answers to be defiant in any way.
11 I put those answers because I believe that I have given
12 them everything that I had been requested to under court
13 order.

14 THE COURT: Well, that's not what --

15 MR. MCDONNELL: And (indiscernible) --

16 THE COURT: -- those answers say.

17 MR. MCDONNELL: -- (indiscernible) your Honor
18 to be -- to be going through all this stuff.

19 THE COURT: That is --

20 MR. MCDONNELL: I did all this on my own.

21 THE COURT: The answers do not say --

22 MR. MCDONNELL: (Indiscernible) everybody
23 (indiscernible) to the defendants, every -- the
24 plaintiffs, everybody just respects that. I know we're
25 adversaries but can people respect that this is one

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1 person fighting all of you, a huge office? I think I'm
2 doing okay. I'm trying my best. You can see everyday I
3 am learning and I am trying to practice this law
4 according to your structure. I am not perfect and I
5 probably never will be in this law because it's not what
6 I chose to do.

7 And I am -- I apologize to you. I apologize to
8 the plaintiffs. I apologize to everybody for my
9 ignorance but I did not willfully avoid this order and I
10 did not not take the time to specifically read each and
11 everyone of them. And I was being honest in my answer.
12 It might not be suitable to the Court, it might not be
13 suitable to the plaintiff's needs but that's my honest
14 opinion because I felt and I still feel that I have
15 (indiscernible) all this information to the plaintiff.

16 THE COURT: Well again, I do not view these
17 responses as satisfying the Court's order. There is a
18 motion to sanction you, either in terms of monetary
19 sanctions or an order preclusion. Since you are pro se,
20 I am prepared to give you an opportunity to supplement
21 these responses and I want you to go through them one by
22 one --

23 MR. MCDONNELL: (Indiscernible).

24 THE COURT: -- and if your answer is I provided
25 this information -- all -- any and all information I have

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1 in response to this document demand, I provided to the
2 CFTC on March whatever, 2018. Then put that.

3 Or with respect to the accounts, if you
4 provided information to the bankruptcy court, I assume
5 you've saved copies of information that you produced to
6 the bankruptcy court, then say all the account
7 information is attached. It's what I produced to the
8 bankruptcy account.

9 MR. MCDONNELL: Your Honor, (indiscernible) --

10 THE COURT: I want responses that show that
11 you're actually taking seriously each of these demands
12 and I want you to serve them by Monday.

13 MR. MCDONNELL: You'll have them by tomorrow, I
14 promise you.

15 THE COURT: And we have a deposition going
16 forward on Tuesday. And let me just say this because I
17 think it is important to go forward with the deposition
18 because the CFTC hasn't gotten the information it needs
19 through interrogatories and document demands. So I think
20 you should go forward with the deposition and if as a
21 result of the deposition --

22 MR. MCDONNELL: (Indiscernible).

23 THE COURT: -- you end up subpoenaing other
24 parties and get documents, and you need to take a further
25 deposition of Mr. McDonnell, then under the rules you

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1 would be required to seek permission of the Court but I
2 will tell you that I will look favorably on such an
3 application, given the way this case has been handled by
4 the defendant to date.

5 MR. HURAND: Thank you, your Honor.

6 THE COURT: All right. Is there anything
7 further?

8 MR. HURAND: One thing. I think if Mr.
9 McDonnell wanted to take the weekend and give us
10 responses to the document requests and also to the
11 interrogatories under oath, on Monday morning, I just
12 want to -- I would rather him do it thoroughly than crank
13 out something very quickly.

14 THE COURT: I said I was going to give him
15 until Monday. Let's say until noon on Monday --

16 MR. MCDONNELL: All right. I --

17 THE COURT: -- so that we'll have an actual
18 thoughtful response and you're not going to find yourself
19 being asked the same questions at deposition because if
20 you just give some off, you know -- backhanded responses,
21 they're going to be -- you can be sure that at your
22 deposition, they're going to be asking follow-up
23 questions and then they'll probably move for sanctions
24 again.

25 MR. MCDONNELL: Okay.

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1 THE COURT: Now one final matter I want to
2 raise and that is Mr. McDonnell, you have not registered
3 to receive ECF filings and it --

4 MR. MCDONNELL: No, I --

5 THE COURT: -- has been problematic for the
6 Court --

7 MR. MCDONNELL: -- (indiscernible).

8 THE COURT: -- because every time I issue an
9 order, if you had registered for ECF, although you would
10 not be permitted to docket into ECF, you would receive
11 the Court's order and because you haven't registered --

12 MR. MCDONNELL: (Indiscernible) for me every
13 time (indiscernible).

14 THE COURT: Excuse me?

15 MR. MCDONNELL: The plaintiff, every time that
16 you do put out an order, they always send it to me. They
17 (indiscernible).

18 THE COURT: Well, they're not obligated to do
19 that.

20 MR. MCDONNELL: No, but they have.

21 THE COURT: But the Court is obligated to make
22 sure you're served with anything that it issues.

23 MR. MCDONNELL: Okay.

24 THE COURT: And I want you to get my orders
25 quickly. So is there a reason why you haven't registered

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1 for ECF?

2 MR. MCDONNELL: No, I guess it's just that we
3 were like -- I honestly felt comfortable dealing with the
4 ECF through them, like it was just one streamlined
5 process that (indiscernible).

6 THE COURT: It's not streamlined because if
7 there is something that goes out at 7 o'clock at night
8 from the Court and --

9 MR. MCDONNELL: Yes.

10 THE COURT: -- they don't see it until the next
11 day, then you complain about the delay.

12 MR. MCDONNELL: No, I only --

13 THE COURT: If you registered for ECF --

14 MR. MCDONNELL: -- (indiscernible) --

15 THE COURT: -- you would --

16 MR. MCDONNELL: -- (indiscernible) on time, you
17 know, and to their credit is what I am saying. To my
18 credit -- to my lack of credit, I need to set it up
19 tonight.

20 THE COURT: Please. I don't know whether you
21 can do it tonight or not. I don't know whether you need
22 the assistance of the clerk's office --

23 MR. MCDONNELL: (Indiscernible) application
24 (indiscernible). I have looked at it. It says mail an
25 application in and about five days, they'll, you know,

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1 send it to them in the pro se office and then they'll
2 approve it and (indiscernible).

3 THE COURT: You may have to mail it in but do
4 it sooner --

5 MR. MCDONNELL: Yes.

6 THE COURT: -- rather than later. For example,
7 I will be doing a minute entry of very, very short form
8 summary of this proceeding. That will be docketed
9 tonight. You're not going to get it tonight, unless the
10 -- unless one of the attorneys for plaintiff happens to
11 be around and sends it to you but if you were registered
12 for ECF, you would get it as soon as it's filed.

13 MR. MCDONNELL: All right.

14 THE COURT: All right. Thank you very much.
15 Good night.

16 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 3rd day of June, 2018.


Linda Ferrara

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